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9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF NEVADA**

12 THE NEVADA DIVISION OF STATE  
LANDS,

Case No. 3:24-cv-00190-LRH-CLB

13 Plaintiff,  
14 vs.  
15 CINDY MARLIN; DANA MARLIN;  
16 MARLIN LIVING TRUST; DOES 1 to 100  
and ROE CORPORATIONS 1 to 100,  
17 inclusive,  
18 Defendants.

**MOTION TO STAY BRIEFING  
AND DECISION ON DEFENDANTS'  
MOTION TO DISMISS PENDING  
RULING ON PLAINTIFF'S  
MOTION TO REMAND**

19 Plaintiff, the Nevada Division of State Lands ("the Division"), by and through  
20 counsel, Nevada Attorney General Aaron D. Ford, Deputy Attorney General Nathan C.  
21 Holland, and Deputy Attorney General Jordan K. Laub, hereby submits this Motion to Stay  
22 the Briefing and Decision on Defendants' Motion to Dismiss pending this Court's ruling on  
23 Plaintiff's Motion to Remand. This Motion is made and based upon the following  
24 Memorandum of Points and Authorities, the pleadings and papers on file herein, and any  
25 oral argument permitted at the hearing of this Motion.

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

3 On March 29, 2024, the Division filed a Complaint in the Ninth Judicial District  
4 Court of the State of Nevada in and for the County of Douglas against Defendants for  
5 trespass, trespass to chattels, nuisance, unjust enrichment, and negligence related to  
6 Defendants' unauthorized limbing of trees on property owned by the State of Nevada. On  
7 April 27, 2024, Defendants removed this case to federal court on the basis of diversity  
8 jurisdiction. On May 17, 2024, the Division filed a Motion to Remand this case back to state  
9 court, arguing that this Court lacks subject matter jurisdiction because the Division is not  
10 a "citizen" for diversity purposes and is entitled to sovereign immunity as an arm of the  
11 State of Nevada.

12        In the interim, Defendants filed a Motion to Dismiss on May 4, 2024. The Division  
13 now moves to stay the briefing schedule and decision on Defendants' Motion to Dismiss  
14 until this Court has ruled on the Division's pending Motion to Remand. Counsel for the  
15 Division, Nathan Holland, met and conferred with counsel for Defendants, Maurice  
16 VerStandig, regarding this request, but Defendants declined to stipulate to a stay.

II. The Court Should Stay the Motion to Dismiss Proceedings Pending Resolution of the Threshold Jurisdictional Issues Raised in the Motion to Remand

20 The Supreme Court has confirmed that “the District Court has broad discretion to  
21 stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*,  
22 520 U.S. 681, 706 (1997) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). The Ninth  
23 Circuit has similarly recognized that “[a] trial court may, with propriety, find it is efficient  
24 for its own docket and the fairest course for the parties to enter a stay of an action  
25 before it, pending resolution of independent proceedings which bear upon the case.”  
26 *Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983)  
27 (quoting *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979)).

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1       The importance of resolving jurisdictional issues before addressing the merits of a  
 2 case is well-established. In *Steel Co. v. Citizens for Better Environment*, the Supreme Court  
 3 clarified that “a federal court generally may not rule on the merits of a case without first  
 4 determining that it has jurisdiction over the category of claim in suit (subject-matter  
 5 jurisdiction) and the parties (personal jurisdiction).” 523 U.S. 83, 93–94 (1998). In *Steel Co.*  
 6 *v. Citizens for Better Environment*, the Supreme Court emphasized that “[w]ithout  
 7 jurisdiction the court cannot proceed at all in any cause”; it may not assume jurisdiction  
 8 for the purpose of deciding the merits of the case. 523 U.S. 83, 94 (1998) (quoting *Ex parte*  
 9 *McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868)).

10      The Supreme Court later reaffirmed this principle in *Sinochem Int'l Co. v. Malaysia*  
 11 *Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007), underscoring the fundamental importance  
 12 of establishing jurisdiction before addressing the merits of a case. The court further noted  
 13 that “a federal court generally may not rule on the merits of a case without first  
 14 determining that it has jurisdiction over the category of claim in suit (subject-matter  
 15 jurisdiction) and the parties (personal jurisdiction).” *Id.* at 430–31 (citing *Steel Co.*,  
 16 523 U.S. at 93–102).

17      Furthermore, courts have an independent obligation to ensure they have subject  
 18 matter jurisdiction before reaching the merits of a case. The Supreme Court has  
 19 emphasized that “[w]hen a requirement goes to subject-matter jurisdiction, courts are  
 20 obligated to consider *sua sponte* issues that the parties have disclaimed or have not  
 21 presented.” *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012).

22      In addition to the Supreme Court’s clear guidance on the importance of establishing  
 23 jurisdiction before reaching the merits of a case, the Ninth Circuit has also recognized the  
 24 court’s continuing obligation to assess its own subject matter jurisdiction. The Ninth  
 25 Circuit has emphasized that “federal courts are courts of limited jurisdiction,” and that  
 26 “[a] federal court is presumed to lack jurisdiction in a particular case unless the contrary  
 27 affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*,  
 28 873 F.2d 1221, 1225 (9th Cir. 1989) (citing *California ex rel. Younger v. Andrus*,

1 608 F.2d 1247, 1249 (9th Cir. 1979)). This duty to confirm jurisdiction persists throughout  
2 the litigation, as the court has “an independent obligation to determine whether  
3 subject-matter jurisdiction exists, even in the absence of a challenge from any party.”  
4 *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). The Ninth Circuit has also recognized  
5 this obligation, stating that “[t]he court has a continuing obligation to assess its own  
6 subject-matter jurisdiction, even if the issue is neglected by the parties.” *Allstate Ins. Co.*  
7 *v. Hughes*, 358 F.3d 1089, 1093 (9th Cir. 2004 ), citing (*United States v. Ceja-Prado*,  
8 333 F.3d 1046, 1049 (9th Cir.2003)).

9 Given these well-established principles, it is imperative that the Court address the  
10 jurisdictional challenge raised in the Division’s Motion to Remand before considering the  
11 merits of the case.

12 Here, the Division’s Motion to Remand challenges the Court’s subject matter  
13 jurisdiction and thus has the potential to dispose of the entire case. A short stay to allow  
14 this threshold jurisdictional question to be decided is therefore appropriate and well within  
15 this Court’s inherent discretion as described in *Landis*. The Court’s power to manage its  
16 docket efficiently amply supports a stay under these circumstances. Furthermore, staying  
17 the Motion to Dismiss proceedings until the jurisdictional issue is resolved promotes  
18 judicial economy by avoiding potentially unnecessary litigation and conserving the Court’s  
19 and the parties’ resources.

20 In light of the strong legal authority supporting a stay and the significant judicial  
21 resources that would be conserved by resolving the threshold jurisdictional question first,  
22 the Court should exercise its broad discretion to stay the Motion to Dismiss proceedings  
23 pending the resolution of the Division’s Motion to Remand. This approach ensures that the  
24 Court is acting within the proper scope of its authority and avoids potentially unnecessary  
25 or improper rulings on the merits of the case.

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### III. CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Court stay the briefing and decision on Defendants' Motion to Dismiss pending resolution of the Division's Motion to Remand. This will allow the Court to address the threshold jurisdictional issues before expending resources on the merits. A short stay will not prejudice any party and will conserve judicial and litigant resources.

DATED this 30th day of May, 2024.

AARON D. FORD  
Attorney General

By: /s/ Nathan C. Holland  
NATHAN C. HOLLAND (Bar No. 15247)  
Deputy Attorney General  
JORDAN K. LAÜB (Bar No. 15767)  
Deputy Attorney General

## **CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 30th day of May, 2024, I served a true and correct copy of the foregoing MOTION TO STAY BRIEFING AND DECISION ON DEFENDANTS' MOTION TO DISMISS PENDING RULING ON PLAINTIFF'S MOTION TO REMAND, by electronic service to the participants in this case who are registered with the U.S. District Court's CM/ECF electronic service to this matter:

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